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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 CHARLOTTE WINELAND, Individually,
9 and SUSAN WINELAND, as Personal
Representative of the Estate of JOHN DALE
WINELAND, deceased,

10 Plaintiffs,

11 v.

12 AIR & LIQUID SYSTEMS
13 CORPORATION, *et al.*,

14 Defendants.

Cause No. C19-0793RSL

ORDER GRANTING
ANCHOR/DARLING VALVE CO.'S
MOTION FOR SUMMARY
JUDGMENT (DKT. # 309)

This matter comes before the Court on defendant "Anchor/Darling Valve Co.'s Amended Motion for Summary Judgment." Dkt. # 309. Plaintiffs' decedent, John Dale Wineland, worked aboard a series of Navy ships and in Navy offices between 1963 and 1984. Plaintiffs allege that Mr. Wineland was exposed to asbestos contained in Anchor/Darling products while aboard the USS TUSCALOOSA between 1972 and 1974. Mr. Wineland worked primarily in the engine rooms of the ships to which he was assigned, repairing and maintaining machinery and equipment such as diesel engines, pumps, air compressors, and valves. Mr. Wineland developed mesothelioma, an asbestos-related disease, and died in 2018. Plaintiffs assert that Anchor/Darling is liable for Mr. Wineland's illness and death under theories of negligence and strict liability.

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1 Anchor/Darling seeks summary dismissal of all of plaintiffs' claims, arguing that, under
2 either Washington or maritime law, (a) plaintiffs have failed to produce admissible evidence
3 from which a jury could reasonably conclude that Mr. Wineland's exposure to asbestos from
4 Anchor/Darling products was a substantial contributing factor in his illness and death and
5 (b) it had no legal duty to ensure that products and replacement parts manufactured by others
6 were reasonably safe and/or properly labeled. Having reviewed the memoranda, declarations,
7 and exhibits submitted by the parties¹ and taking the evidence in the light most favorable to
8 plaintiffs, the Court finds as follows:

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10 **A. Summary Judgment Standard**

11 Summary judgment is appropriate when, viewing the facts in the light most favorable to
12 the nonmoving party, there is no genuine issue of material fact that would preclude the entry of
13 judgment as a matter of law. The party seeking summary dismissal of the case "bears the initial
14 responsibility of informing the district court of the basis for its motion" (*Celotex Corp. v.*
15 *Catrett*, 477 U.S. 317, 323 (1986)) and "citing to particular parts of materials in the record" that
16 show the absence of a genuine issue of material fact (Fed. R. Civ. P. 56(c)). Once the moving
17 party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to
18 designate "specific facts showing that there is a genuine issue for trial." *Celotex Corp.*, 477 U.S.
19 at 324. The Court will "view the evidence in the light most favorable to the nonmoving party . . .
20 and draw all reasonable inferences in that party's favor." *Colony Cove Props., LLC v. City of*
21 *Carson*, 888 F.3d 445, 450 (9th Cir. 2018). Although the Court must reserve for the trier of fact
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23 ¹ This matter can be decided on the papers submitted in connection with this motion and the
24 supplemental briefing regarding the applicability of maritime law. The parties' requests for oral
25 argument are DENIED.

genuine issues regarding credibility, the weight of the evidence, and legitimate inferences, the “mere existence of a scintilla of evidence in support of the non-moving party’s position will be insufficient” to avoid judgment. *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment. *S. Cal. Darts Ass’n v. Zaffina*, 762 F.3d 921, 925 (9th Cir. 2014). In other words, summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable fact finder could return a verdict in its favor. *Singh v. Am. Honda Fin. Corp.*, 925 F.3d 1053, 1071 (9th Cir. 2019).

B. Causation

For the reasons set forth in the Order Granting Crane Co.’s Motion for Summary Judgment, the Court finds that maritime law applies to plaintiffs’ tort claims. To prevail on their negligence and strict liability claims, plaintiffs “must demonstrate, among other things, that [Mr. Wineland’s] injuries were caused by exposure to asbestos that was attributable to [Anchor/Darling’s] conduct.” *McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1174 (9th Cir. 2016). See also *Lindstrom v. A-C Prod. Liab. Tr.*, 424 F.3d 488, 492 (6th Cir. 2005), abrogated on other grounds by *Air & Liquid Sys. Corp. v. DeVries*, ___ U.S. ___, 139 S. Ct. 986 (2019). To establish causation under maritime law, plaintiffs must show that Mr. Wineland’s exposure to asbestos from Anchor/Darling products “was a substantial contributing factor in causing his injuries.” *McIndoe*, 817 F.3d at 1174. Evidence of only minimal exposure to asbestos dust attributable to each defendant is insufficient: plaintiffs must provide “evidence regarding the amount of exposure to dust” attributable to Anchor/Darling and, “critically, the duration of such

1 exposure.” *Id.* at 1176-77 (emphasis in original). The evidence must show “a high enough level
2 of exposure that an inference that the asbestos was a substantial factor in the injury is more than
3 conjectural.” *Id.* at 1176 (quoting *Lindstrom*, 424 F.3d at 492). “[M]ore is needed” than simply
4 placing a defendant’s products in the workplace and showing that the decedent was occasionally
5 exposed to asbestos dust from those products. *Id.* at 1176-77.
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7 While there is evidence that Anchor/Darling check valves and manifolds were installed
8 on the TUSCALOOSA (Dkt. # 398-3 at 20; Dkt. # 398-8 at 18-19) and that Mr. Wineland was
9 exposed to significant levels of asbestos dust while working in the engine room of that vessel,²
10 plaintiffs have not produced evidence from which a reasonable jury could conclude that he
11 suffered a substantial exposure to asbestos dust from Anchor/Darling products. Absent evidence
12 regarding where the Anchor/Darling check valves and manifolds were installed on the
13 TUSCALOOSA and whether any of the asbestos-containing seals on the valves during Mr.
14 Wineland’s service on the vessel were manufactured or supplied by Anchor/Darling, it is
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17 ² Based on his extensive experience in the Navy and at naval shipyards, including the supervision
18 of enginemen during the relevant time frame aboard the USS BRUMBY and the USS
19 NEWPORT NEWS, Captain Arnold Moore opines that Mr. Wineland repaired, assisted with the repair,
20 observed the repair or cleaned up after the repair of the major machinery and many of the valves in the
21 engine rooms of the DYNAMIC, LOYALTY, ESTEEM, and TUSCALOOSA. Dkt. # 355-3 at 8.
22 Captain Moore describes how these repairs would be carried out, including activities which would
23 invariably create asbestos dust, including the removal of old, dried packing and gaskets and the cutting
24 and installation of new packing and gasket materials Dkt. # 355-3 at 9. Plaintiffs’ industrial hygienist,
25 Steven Paskal, similarly opines that “it is virtually certain that [Mr. Wineland], and/or others in close
26 proximity and/or in shared, enclosed airspaces, would have routinely removed and replaced gaskets and
27 stem/shaft packing associated with . . . valves.” Dkt. # 355-12 at 5. These activities would have exposed
28 Mr. Wineland to an asbestos-containing aerosol that would remain suspended in air streams for extended
periods of time at concentrations that ranged from hundreds to millions of times ambient pollution
levels. Dkt. # 355-12 at 2-3 and 6. Gregory Bullinger, a shipmate of Mr. Wineland on the
TUSCALOOSA, confirms that “work on the equipment in the engine room was regular, ongoing, and
routine. We all removed and replaced packing and gaskets on the various equipment, including the
valves, pumps, and ALCO diesel engines.” Dkt. # 335-17 at 3.

1 impossible to draw any conclusions regarding whether Mr. Wineland was exposed to asbestos
2 from Anchor/Darling products, much less the amount or duration of the such exposure.

3 Plaintiffs have failed to raise a triable issue of fact regarding causation under maritime
4 law.

5 **C. Duty**

6 The parties generally agree that an original equipment manufacturer faces liability for
7 component parts it installs in and supplies with its products, as well as for replacement parts it
8 manufactures and supplies. They also agree that, under maritime (or Washington) law, a
9 manufacturer generally does not owe a duty with regards to replacement parts or ancillary
10 products (such as insulation) manufactured and sold by third-parties unless the manufacturer in
11 some way invites or requires the integration of the third-party product. *See DeVries*, 139 S. Ct. at
12 995 (holding that, under maritime law, original equipment manufacturers have a duty to warn
13 “only when their product *requires* a part in order for the integrated product to function as
14 intended”) (emphasis in original); *Macias v. Saberhagen Holdings, Inc.*, 175 Wn.2d 402, 414-15
15 (2012) (distinguishing cases in which no duty to warn was found on the ground that the
16 manufacturers’ products in those cases did not require that asbestos be used in conjunction with
17 the products, were not specifically designed to be used with asbestos, and would not, by their
18 very nature, necessarily involve exposure to asbestos); *Woo v. Gen. Elec. Co.*, 198 Wn. App.
19 496, 508 (2017) (finding a triable issue regarding duty where the product required insulation,
20 gaskets, and packing to function as designed, the manufacturer knew that only asbestos-
21 containing insulation, gaskets, and packing were available, and the manufacturer provided pre-cut
22 asbestos containing gaskets with the product and generally purchased and field-installed
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1 insulation to factory specifications).

2 Plaintiffs argue that Anchor/Darling should face liability for its failure to warn of the
3 hazards of asbestos-containing replacement parts supplied by third-parties because
4 Anchor/Darling was aware that the asbestos components in its products would wear out and that
5 asbestos-containing replacements were necessary for the equipment to function as designed. Dkt.
6 # 398 at 17. Evidentiary support for this argument is lacking. The relevant naval records, as
7 interpreted and summarized by Captain Arnold Moore, show only that “Anchor/Darling check
8 valves and manifolds” were “installed on the TUSCALOOSA.” Dkt. # 398-3 at 20. To the extent
9 these facts relate to products manufactured and/or supplied by Anchor/Darling, its duty to warn
10 is not contested. None of these facts relates to third-party replacement parts, suggests that any
11 particular Anchor/Darling’s product was designed to work only with asbestos-containing
12 products, or raises an inference that Anchor/Darling required the use of asbestos-containing
13 replacement parts, however. The problem is not with plaintiffs’ theory of liability, but with their
14 proof. *See, e.g., Devries*, 139 S. Ct. at 995-96 (“Courts have determined that [a duty to warn of
15 the dangers of third-party products arises] in certain related situations, including when: (i) a
16 manufacturer directs that the part be incorporated; (ii) a manufacturer itself makes the product
17 with a part that the manufacturer knows will require replacement with a similar part; or (iii) a
18 product would be useless without the part. In all of those situations, courts have said that the
19 product in effect requires the part in order for the integrated product to function as intended. We
20 agree.”) (internal citations omitted).

21 Plaintiffs have failed to provide evidence from which a reasonable jury could conclude
22 that Anchor/Darling is liable for any asbestos-containing replacement part or ancillary product

1 that was manufactured by a third party and integrated into a Anchor/Darling product installed on
2 the USS TUSCALOOSA.

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5 For all of the foregoing reasons, Anchor/Darling's motion for summary judgment (Dkt.
6 # 309) is GRANTED.

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8 Dated this 17th day of May, 2021.

9 Robert S. Lasnik

10 Robert S. Lasnik
11 United States District Judge